

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption of )	NOTICE OF PUBLIC HEARING ON
NEW RULES I through XVIII )	PROPOSED ADOPTION
pertaining to clandestine )	
manufacture of methamphetamine )	
)	
)	

TO: All Concerned Persons

1. On xxxx x, 2005, at 10:30 a.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., xxxxxx xx, 2005, to advise us of the nature of the accommodation that you need. Please contact Robert Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email [rmartin@mt.gov](mailto:rmartin@mt.gov).

3. The proposed new rules provide as follows:

NEW RULE I PURPOSE This subchapter is adopted to protect the public health, safety, and welfare by providing specific cleanup standards for clandestine methamphetamine labs (CML). The department has established a voluntary program which provides a property decontamination process that will ensure attainment of the cleanup standards.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE II INCORPORATION BY REFERENCE -- PUBLICATION DATES

(1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to:

(a) a federal regulation, the reference is to the July 1, 2005, edition of the Code of Federal Regulations (CFR);

(b) a section of the United States Code (USC), the reference refers to the 2000 edition of the USC and Supplement 1 (2002);

(c) a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA; or

(d) a rule of the department or of another agency of the state of Montana, the reference is to the December 31, 2004, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-10-1303, 75-10-1304, MCA

IMP: 75-10-1303, 75-10-1304, MCA

NEW RULE III INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department hereby adopts and incorporates by reference the following:

(a) ARM Title 17, chapters 50, 53, and 74 pertaining to solid waste, hazardous waste, and asbestos abatement;

(b) 29 CFR part 1910, Occupational Safety and Health Standards;

(c) 40 CFR Part 261, Identification and Listing of Hazardous Waste;

(d) American Society for Testing and Materials, Method D5756-02, (November 2002), Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration;

(e) National Institute for Occupational Health and Safety, Manual of Analytical Methods, 4th Ed., Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996);

(f) Revised Code of Washington (RWC) 69.43.010, Report to state board of pharmacy -- List of substances -- Modification of list -- Identification of purchasers -- Report of transactions -- Penalties (4/1/91); and

(g) Montana Clandestine Methamphetamine Lab Decontamination Sampling and Analysis Plan (August 2005) pertaining to sampling methods and procedures and sample analysis.

AUTH: 75-10-1303, 75-10-1304, MCA

IMP: 75-10-1303, 75-10-1304, MCA

NEW RULE IV DEFINITIONS (1) For the purposes of this subchapter, the following words and phrases shall have the following meanings unless the content clearly indicates otherwise:

(a) "Basic course" means a training course which has been sponsored or approved by the department for workers and supervisors who perform or supervise decontamination on CML sites.

(b) "Certified contractor" means any person or persons to whom the department has issued written approval under this subchapter to decontaminate inhabitable property.

(c) "Certificate" means a department-issued written approval under this subchapter.

(d) "Certified person" means a person to whom the department has issued written approval under this subchapter.

(e) "Contaminated" or "contamination" mean polluted by hazardous chemicals so that the inhabitable property may be unfit for human habitation or use due to immediate or long-term hazards. Inhabitable property that at one time was contaminated, but has been satisfactorily decontaminated according to procedures established by the department is not "contaminated."

(f) "Decontamination" means the process of reducing levels of known contaminants to the lowest practical level

using currently available methods and processes.

(g) "Department" means the Montana department of environmental quality.

(h) "Hazardous chemicals" means the following substances:

(i) methamphetamine as defined in NEW RULE IV(1)(k); and

(ii) precursor substances as defined in NEW RULE IV(1)(m).

(i) "Inhabitable property" has the meaning provided in section 75-10-1302, MCA.

(j) "Initial site assessment" means the first evaluation of a property to determine the nature and extent of observable damage and contamination.

(k) "Methamphetamine" means dextro-methamphetamine, levo-methamphetamine, or any mixture of unidentified isomers of the same, any racemic mixture of dextro/levo-methamphetamine, or any mixture of unidentified isomers of methamphetamine.

(l) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

(m) "Precursor substances" means the following compounds, as defined in Revised Code of Washington, RWC 69.43.010:

(i) anthranilic acid;

(ii) barbituric acid;

(iii) chlorephedrine;

(iv) diethyl malonate;

(v) d-lysergic acid;

(vi) ephedrine;

(vii) ergotamine tartrate;

(viii) ethylamine;

(ix) ethyl malonate;

(x) ethylephedrine;

(xi) lead acetate;

(xii) methylamine;

(xiii) methylformamide;

(xiv) methylephedrine;

(xv) methylpseudoephedrine;

(xvi) n-acetylanthranilic acid;

(xvii) norpseudoephedrine;

(xviii) phenylacetic acid;

(xix) phenylpropanolamine;

(xx) piperidine;

(xxi) pseudoephedrine;

(xxii) pyrrolidine; and

(xxiii) any other chemical compound(s) which the department determines have been used in the clandestine manufacture of methamphetamine.

(n) "Property owner" means a person with a lawful right of possession of the property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

(o) "Refresher course" means a department-sponsored or department-approved training course for previously certified CML decontamination workers and supervisors.

(p) "Supervisor" means a certified person employed by an certified contractor who is on site during the decontamination of a CML site and who is responsible for the activities performed.

(q) "Vacuum sample" or "Microvacuum sample" means a non-airborne dust sample collected from a known surface area of a porous surface or material using standard microvacuuming techniques described in American Society for Testing and Materials, Method D5756-02, (November 2002), Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration.

(r) "Wipe sample" means a surface sample collected by wiping a sample media on surface materials in accordance with the field equipment and sampling guidance in National Institute for Occupational Health and Safety, Manual of Analytical Methods, 4th Ed., Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996).

(s) "Worker" means a certified person employed by an certified contractor who performs decontamination of a clandestine methamphetamine lab site.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE V DECONTAMINATION STANDARDS (1) The CML decontamination standards are, as follows:

(a) surface wipe samples and vacuum samples for methamphetamine shall not exceed 0.1 micrograms ( $10^{-6}$  gram) per 100 square centimeters;

(b) volatile organic compounds (VOCs) shall not exceed 1 part per million total hydrocarbons and VOCs in air; and

(c) in the event a phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used, surface wipe samples for lead shall not exceed 20 micrograms per square foot, and vapor samples for mercury shall not exceed 50 nanograms ( $10^{-9}$  gram) per cubic meter in air.

AUTH: 75-10-1303, MCA

IMP: 75-10-1303, MCA

NEW RULE VI DECONTAMINATION PERFORMANCE, ASSESSMENT, AND INSPECTION (1) If the property owner or other similarly placed person in charge of inhabitable property (as defined in 75-10-1302(2)(a), MCA) chooses to decontaminate a clandestine methamphetamine drug lab, the property owner or other similarly placed person shall use contractors, supervisors or workers certified pursuant to this subchapter.

(i) Sampling, submittal of samples for analysis, and any other work performed to assess the extent of contamination at an inhabitable property where clandestine methamphetamine

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manufacturing has taken place shall be performed only by certified contractors or the department.

(ii) Sampling, submittal of samples for analysis, and any other work performed to ensure compliance with CML decontamination standards at an inhabitable property where clandestine methamphetamine manufacturing has taken place shall be performed only by certified contractors or the department.

(2) At any reasonable time and upon presentation of credentials, an employee or agent of the department may enter upon and inspect any place at which:

(a) a CML decontamination project is being conducted pursuant to this subchapter; or

(b) records pertinent to a CML decontamination project are maintained.

(i) The employee or agent of the department may have access to and may copy any records relating to an CML decontamination project for the purpose of enforcing the provisions of this subchapter.

AUTH: 75-10-1303, MCA

IMP: 75-10-1303, MCA

NEW RULE VII PERFORMANCE STANDARDS (1) Certified contractors, including workers and supervisors, working at a CML decontamination site shall, at a minimum:

(a) perform all decontamination work only with certified workers and supervisors;

(b) file a work plan with and obtain approval from the department;

(c) perform work in accordance with the approved work plan;

(d) station on site a contractor-employed certified supervisor to oversee the activities performed;

(e) perform work meeting applicable requirements of state and local building codes;

(f) comply with applicable requirements of 29 CFR part 1910, Occupational Safety and Health Standards;

(g) comply with applicable requirements of ARM Title 17, chapters 50, 53, and 74;

(h) comply with applicable contractor regulations; and

(i) comply with all other applicable laws, rules and regulations.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE VIII CONTRACTOR CERTIFICATION AND RENEWAL (1) A contractor may advertise, offer to undertake, or perform decontamination or disposal work at a CML decontamination site only after securing a certificate from the department.

(2) Applicants for department certification or renewal of certification as a certified CML decontamination contractor, shall submit to the department:

- (a) evidence of department certification for each employee who will work at a CML decontamination site;
  - (b) documentation that the contractor has at least one department certified CML decontamination supervisor and one department certified CML decontamination worker;
  - (c) a completed CML decontamination contractor application form; and
  - (d) a fee as prescribed in NEW RULE XVIII.
- (3) Contractor CML decontamination certification is valid for two years from the date of issuance.
- (4) If a certified CML decontamination contractor applies for renewal of certification prior to the expiration of the current certificate, or if a previously certified contractor applies for certification following expiration of the previous certificate the applicant shall follow the requirements of (2)(a) through (d).

AUTH: 75-10-1304, MCA  
IMP: 75-10-1304, MCA

- NEW RULE IX WORKER AND SUPERVISOR CERTIFICATION (1)
- Applicants seeking certification as a CML decontamination worker shall ensure the department receives the following within sixty (60) days of completing the basic worker course:
- (a) a completed CML decontamination worker application;
  - (b) evidence of successful completion of Hazardous Waste Operations and Emergency Response training pursuant to 29 CFR 1910.120;
  - (c) a fee as prescribed in NEW RULE XVIII;
  - (d) evidence of successful completion of a department sponsored or approved basic CML decontamination worker course; and
  - (e) evidence of passing the basic CML decontamination worker examination administered by the department with a score of seventy (70) percent or higher.
- (2) Applicants seeking certification as a CML decontamination supervisor shall ensure the department receives the following within sixty (60) days of completing the basic supervisor course:
- (a) a completed CML decontamination supervisor application;
  - (b) evidence of successful completion of Hazardous Waste Operations and Emergency Response training pursuant to 29 CFR 1910.120;
  - (c) a fee as prescribed in NEW RULE XVIII;
  - (d) evidence of a valid Montana state CML decontamination worker certificate;
  - (e) evidence of forty (40) or more hours of on-site experience in hazardous material or CML decontamination projects;
  - (f) evidence of successful completion of a department sponsored or approved basic CML decontamination supervisor course; and

(g) evidence of passing the basic CML decontamination supervisor examination administered by the department with a score of seventy (70) percent or higher.

(3) The department may waive some or all of the experience requirement for persons seeking certification as a CML decontamination supervisor whose applications are received by the department prior to October 1, 2006.

(4) Worker and supervisor CML decontamination certificates are valid for two years from the date of issuance.

(5) Workers and supervisors shall make certificates available for inspection at all times during an CML decontamination project.

(6) The certificate may be denied, suspended, or revoked as described in NEW RULE XVII.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE X WORKER AND SUPERVISOR CERTIFICATION RENEWAL

(1) Certified CML decontamination workers and supervisors seeking certificate renewal shall submit to the department thirty (30) or more days before expiration of the current certificate:

(a) a completed application form for certificate renewal;

(b) a fee prescribed in NEW RULE XVIII and

(c) evidence of successful completion of a department sponsored or approved refresher training course.

(2) If a previously certified worker applies for certification following expiration of the previous certificate, but less than two years after expiration of the previous certificate, the worker shall submit to the department:

(a) a completed application form for certificate renewal;

(b) a fee prescribed in ARM NEW RULE XVIII; and

(c) evidence of successful completion of the most recent department sponsored or approved basic CML decontamination worker course.

(3) If a previously certified supervisor applies for certification following expiration of the previous certificate, but less than two years after expiration of the previous certificate, the supervisor shall submit to the department:

(a) a completed application form for certificate renewal;

(b) a fee prescribed in NEW RULE XVIII; and

(c) evidence of successful completion of the most recent department sponsored or approved basic CML decontamination supervisor course.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XI BASIC TRAINING COURSE CONTENT (1) Department approved basic worker and supervisor CML decontamination training courses shall provide at a minimum:

(a) information on state and federal laws, rules, and regulations applicable to clandestine methamphetamine manufacturing sites including, but not limited to, precursor drugs; the Federal Occupational Safety and Health Act, 29 USC 651 et seq.; and this subchapter;

(b) chemical terminology, classifications, and properties related to clandestine methamphetamine manufacturing;

(c) clandestine methamphetamine laboratory characteristics;

(d) first aid;

(e) adverse health effects of exposure related to clandestine methamphetamine manufacturing including, but not limited to:

(i) toxicology; and

(ii) symptomology.

(f) incompatibility of chemicals related to CML decontamination;

(g) techniques and equipment used for CML decontamination of property;

(h) handling unknown substances;

(i) state and federal requirements for hazardous substances including, but not limited to:

(i) disposal;

(ii) transportation;

(iii) storage; and

(iv) reporting.

(2) Training for supervisors must also include, but not be limited to:

(a) obtaining necessary information for making site assessments;

(b) initial site assessment;

(c) initial site sampling;

(d) work plan development;

(e) final site sampling; and

(f) report completion.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XII REFRESHER TRAINING COURSE (1) Department approved refresher ML decontamination worker and supervisor training courses shall provide at a minimum:

(a) a thorough review of the subjects required under NEW RULE XI;

(b) an update of information on state-of-the-art procedures and equipment;

(c) a review of regulatory changes and interpretation; and

(d) other subjects if required by the department or as  
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necessary to update information on new technology and procedures.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XIII RECIPROCITY (1) The department shall provide reciprocal certification for contractors, supervisors, and workers trained and certified in another state when standards and training are substantially similar to those of this subchapter.

(2) Applicants for reciprocity shall submit to the department:

(a) a completed application form for the type of certification being requested;

(b) documentation of specialized training for CML decontamination;

(c) evidence of successful completion of Hazardous Waste Operations and Emergency Response training pursuant to 29 CFR 1910.120; and

(d) a fee as prescribed in NEW RULE XVIII.

(3) Prior to certificate approval, the applicant may be required to:

(a) submit additional information;

(b) successfully complete a refresher course; or

(c) pass a department-administered examination.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XIV TRAINING PROVIDER CERTIFICATION (1) Persons wanting to become an CML decontamination training provider must obtain department approval of instructors and courses. The types of CML decontamination courses that may be approved by the department are:

(a) basic worker;

(b) basic supervisor; and

(c) refresher worker and supervisor.

(2) To obtain approval of instructors, the applicant must:

(a) demonstrate that the person has the breadth of knowledge and experience necessary to properly train workers and supervisors; and

(b) provide documentation of the instructors' qualifications that includes academic and/or field experience in CML decontamination.

(3) To obtain approval of course work, the applicant must demonstrate the:

(a) adequacy and accuracy of content; and

(b) adequacy of training techniques.

(4) Applicants for training provider certification shall:

(a) submit a completed training provider application as specified under (5);

(b) submit the required fee as specified under NEW RULE XVIII; and

(c) ensure the department receives the application sixty (60) or more days before the requested approval date.

(5) A training provider application includes, but is not limited to:

(a) a completed training provider application form provided by the department;

(b) a list of all personnel involved in course presentation and a description of their qualifications;

(c) a detailed description of course content and the amount of time allotted to each major topic;

(d) a description of teaching methods;

(e) a list of questions for development of an examination; and

(f) copies of all materials proposed for use, when requested by the department.

(6) Training provider certification is valid for two years from the date of issuance.

(7) Training provider certification may be terminated if the training provider:

(a) fails to maintain the course content and quality as approved by the department;

(b) fails to make changes to a course as required by the department; or

(c) obtains a certificate by error, fraud, or misrepresentation.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

#### NEW RULE XV CERTIFIED TRAINING PROVIDER RESPONSIBILITIES

(1) Prior to any training, the training provider shall:

(a) notify the department in writing thirty (30) or more days before training is scheduled to begin. The notification shall include the date, time, and address of the location where training will be conducted;

(b) ensure that the size of the class is appropriate for learning the course content;

(c) incorporate into training any required subject matter developed by the department;

(d) obtain department approval in advance of any changes to the training; and

(e) maintain the course content and quality as approved by the department.

(2) When requested by the department, the training provider shall confirm successful completion of worker or supervisor training courses by applicants seeking worker or supervisor certification.

(3) At the department's request, the training provider shall allow a department representative to attend a training course as an observer to verify that the training provider conducts the training in accordance with the training approved

by the department.

AUTH: 75-10-1304, MCA  
IMP: 75-10-1304, MCA

NEW RULE XVI TRAINING PROVIDER CERTIFICATION RENEWAL

(1) Training providers seeking renewal certification shall submit the following to the department thirty (30) or more days before expiration of the current certificate:

- (a) a completed training provider application as prescribed in NEW RULE XIV(5); and
- (b) a fee as prescribed in NEW RULE XVIII.

AUTH: 75-10-1304, MCA  
IMP: 75-10-1304, MCA

NEW RULE XVII DENIAL, SUSPENSION, AND REVOCATION OF

CERTIFICATION (1) An initial, renewal, or reciprocal CML decontamination worker, supervisor, contractor, or training provider certificate may be denied when an applicant fails to meet any of the requirements of NEW RULES VIII, IX, X, XIII, XV, and XVI.

(2) Disciplinary action against a CML decontamination worker, supervisor, or contractor may be taken for failing to comply with the requirements of this subchapter, including any of the following grounds:

- (a) failing to perform CML decontamination work under the supervision of certified personnel;
- (b) failing to file a work plan;
- (c) failing to perform work pursuant to the work plan;
- (d) failing to perform work that meets the requirements of the department; or
- (e) obtaining a certificate by error, fraud, or misrepresentation.

(3) Disciplinary action against a worker, supervisor, contractor, or training provider may include denial, suspension, or revocation of certification.

(4) When the department believes that a violation of a rule in this subchapter has occurred, it shall serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of the rule alleged to be violated and the facts alleged to constitute a violation. The notice shall include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, within 30 days after the order is received, the person that has been named requests, in writing, a hearing before the board.

(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under this subchapter.

AUTH: 75-10-1304, MCA  
IMP: 75-10-1304, MCA

NEW RULE XVIII FEES (1) The department shall charge fees for providing training and testing, and to cover the cost of the contractor certification program.

(2) Fees are nonrefundable and shall be in the form of check or money order made payable to the department.

(3) The department shall require payment of the following fees upon receipt of application:

(a) \$500 shall be assessed for each initial, renewal, or reciprocal CML decontamination worker certificate application.

(b) \$500 shall be assessed for each initial, renewal, or reciprocal CML decontamination supervisor certificate application.

(c) \$500 shall be assessed for each initial, renewal, or reciprocal contractor certificate application.

(d) \$500 shall be assessed for each initial or renewal application for CML decontamination training course approval.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

REASON: The adoption of proposed NEW RULES I through XVIII is necessary because, as stated in House Bill 60 (2005): "...some properties are being contaminated with hazardous chemical residues created by the manufacture of methamphetamine. Innocent members of the public may be harmed when they are unknowingly exposed to these residues if the properties are not decontaminated prior to any subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by the lack of a decontamination standard. The purpose of [HB 60] is to protect the public health, safety, and welfare by providing specific cleanup standards and authorizing the department to establish a voluntary program that will provide for a property decontamination process that will meet state standards". HB 60 codified in Title 75, chapter 10, part 13, MCA, authorizes the department to adopt NEW RULES I through XVIII pertaining to the decontamination of contaminated property from clandestine manufacture of methamphetamine.

The fiscal note accompanying HB 60 states: "For purposes of this fiscal note, we are estimating that 15 contractor and local health officials will become certified and that the fees will be \$500 for annual revenue of \$7,500 per year." However, the cumulative amount for all persons of the proposed fees, and the number of persons affected is not known. Proposed NEW RULE XVIII assesses fees for clandestine methamphetamine lab decontamination worker, supervisor and contractor application submittals, and for clandestine methamphetamine lab decontamination training course approval.

6. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Jane MAR Notice No. 17-xxx 1-1/xx/05

Amdahl, Legal Unit, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by fax (406) 444-4386; or by email to jamdahl@mt.gov, no later than xxx xx, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. \*\*\*\*, attorney, has been designated to preside over and conduct the hearing.

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@mt.gov or may be made by completing a request form at any rules hearing held by the Department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

David Rusoff

DAVID RUSOFF  
Rule Reviewer

BY:

Richard H. Opper, Director

Certified to the Secretary of State, xxxx xx, 2005.